

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 2869 - SB 3004

March 9, 2012

SUMMARY OF BILL: Creates a separate offense, punishable as a Class E felony, for a person to actively participate in any criminal gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and willfully promote, further, or assist in any felonious criminal conduct by members of that gang. Any sentence imposed shall be served consecutively to the sentence for any other offense that is based on the same factual allegations, unless the sentencing judge specifically orders the sentences to be served concurrently. Active participation in the criminal street gang is all that is required to secure a conviction or sustain a juvenile petition.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$1,922,000/Incarceration*

Assumptions:


- Criminal gang is defined in Tenn. Code Ann. § 40-35-121 as a formal or informal ongoing organization, association, or group consisting of three or more persons that has as one of its activities the commission of criminal acts and two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity.
- The Department of Correction (DOC) assumes three percent of admissions for aggravated assault, robbery, and aggravated burglary were committed in concert with two or more people based on information obtained from the Bureau of Justice, Statistics of the U.S. Department of Justice website. According to the website, approximately five percent of violent crime victims could determine that the offender(s) were gang members. DOC assumes three percent for Tennessee victims.
- According to DOC, the average operation cost per offender per day for calendar year 2012 is \$61.36. The average post-conviction time served for a Class E felony is 1.28 years (467.52 days) at a cost of \$28,687.03 (\$61.36 x 467.52 days).
- According to DOC, there has been an average of 959 admissions for aggravated assault in each of the past 10 years. DOC assumes three percent or 29 (959 x 3%) would receive an additional Class E sentence to be served consecutively as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in three additional offenders.

- According to the Department, 25.5 percent of offenders will re-offend within one year of their release. A recidivism discount of 25.5 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (32 offenders x 25.5% recidivism discount = 8 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 24 (32 - 8) offenders. The additional operating cost for 24 offenders is \$688,488.72 (\$28,687.03 x 24 offenders).
- According to DOC, there has been an average of 458 admissions for robbery in each of the past 10 years. DOC assumes three percent or 14 (458 x 3%) would receive an additional Class E sentence to be served consecutively as a result of this bill. Population growth will result in an additional two offenders. A recidivism discount of 25.5 percent has been applied to this estimate to account for the impact of offenders would re-offend under current law within the additional time added by this bill (16 offenders x 25.5 recidivism discount = 4).
- The maximum cost in the tenth year is based on 12 (16 - 4) offenders. The additional operating cost of 12 offenders is \$344,244.36 (\$28,687.03 x 12 offenders).
- According to DOC, there has been an average of 1,223 admissions for aggravated burglary in each of the past 10 years. DOC assumes three percent or 37 (1,223 x 3%) would receive an addition Class E sentence to be served consecutively as a result of this bill. Population growth will result in an additional four offenders. A recidivism discount of 25.5 percent has been applied to this estimate to account for the impact of offenders would re-offend under current law within the additional time added by this bill (41 offenders x 25.5 recidivism discount = 10).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 31 (41 - 10) offenders. The additional operating cost for 31 offenders is \$889,297.93 (\$28,687.03 x 31 offenders).
- The total additional operating cost is \$1,922,031.01 (\$688,488.72 + \$344,244.36 + \$889,297.93).

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/lsc